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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,695	03/18/2002	Francisco Parra	02229.0017	9321

7590 11/21/2003
Finnegan, Henderson, Farabow,
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Washington, DC 20005-3315

EXAMINER

TAWFIK, SAMEH

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 11/21/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/006,695

Applicant(s)

PARRA, FRANCISCO

Examiner

Sameh H. Tawfik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 11-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

Applicant's election of Group I (claims 1-10) in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Specification

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.

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- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The disclosure is objected to because of the following informalities: applicant needs to insert bolted headings such as "BACKGROUND OF THE INVENTION", "BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S)", etc.

Appropriate correction is required.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. Such as "Process for the manufacture of an easy open device for 'Flow Pack' or similar packages with longitudinal seams".

The disclosure is objected to because of the following informalities:

(specification page 12, lines 8 and 10) applicant points out to "(17 figures 5 and 6)" which there is no Fig. 6 enclosed in the drawings.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it

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pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant recite in (claim 1, line 8) "producing a cut on at least one end of said detachable strip" while in the (page 14 of specification, lines 9-12) recite that "the detaching strips (5), which, by means of an applicator head (not shown in the figure), are affixed transversally to the packaging sheet (1) and aligned with a through cut (18) generated by the first cutting machine (24). It is not clear if there is a cut on the detachable strips 5 as claimed or strips 5 are aligned with a cut 18 as described in the specifications.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "or" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

(claim 1, line 6) "...attaching said strip transversally to the machine direction..." is vague, indefinite, and/or confusingly worded because it is not clear how the applicant would

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achieve such limitations in the Horizontal Flow Pack packages as shown in Fig. 2 of the application, while the attaching strip 5 is on the machine direction, etc.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forman (3,456,780).

Forman discloses a process for the manufacture of an easy open device for “flow Pack” “or” similar packages with longitudinal seams (via side edge 31) and transversal closings (via end edge 30), constructed horizontally “or” vertically, with a detachable strip (via cutter B), attached and aligned on the internal face of the packaging film by means of an applicator head (column 4, lines 63-66), to be manually grasped and to result in the tearing of the packages, which includes the steps of attaching the strip (B) on the internal face of the packaging film (Figs. 2, 4, and 6) and producing a cut on at least of the detachable strip to generate a tear area, note that cut has to be done to the detachable strip B (column 4, lines 42-47). Forman does not disclose that attaching the strip transversally to the machine direction. However, the examiner believes it would have been an obvious matter of design choice to have modified Forman’s process for the manufacture of an easy open device for “flow Pack” packages by having the step of attaching the strip transversally to the machine direction, since applicant has not disclosed that

attaching the strip transversally to the machine direction solves any stated problem or is for any particular purpose.

Regarding claim 3: the cut is accomplished by means of at least one incision parallel to the detaching strip, see for example (Fig. 1).

Regarding claims 8 and 9: the detachable strip (B) is affixed to the packaging film off and/or on the package production line, see for example (Figs. 1-6).

Regarding claim 10: Forman does not disclose the step of inputting the position of the detaching strip on the package in the control logic, optically reading the alignment for the packaging film in motion, transmitting the information to the applicator head regarding the detaching strip, detaching by means of the applicator head, the detaching strip from the siliconed material that supports it, and affixing by means of the applicator head the detaching strip to the internal face of the packaging film. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Forman's process for the manufacture of an easy open device for "flow Pack" packages by using a control logic, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. In re Venner, 120 USPQ 192.

Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forman (3,456,780) in view of Simeone (3,345,918).

Forman does not disclose the step of wherein the tear area generates an upper flap between the tear area and the closes transversal closure nor the upper flap is folded over on itself and over the tear area. However, Simeone discloses a similar process for the manufacture of an

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easy open device for “flow Pack” packages comprising the steps of wherein the tear area (via 12) generates an upper flap between the tear area and the closes transversal closure and the upper flap is folded over on itself and over the tear area, see for example (Figs. 1-3).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Forman’s process for the manufacture of an easy open device for “flow Pack” packages by locating the detach strip in a way to make the tear area generates an upper flap between the tear area and the closes transversal closure and the upper flap is folded over on itself and over the tear area, as suggested by Simeone, in order to provide new improved cutting means useful on automatic tear strip processing machines in preparing individual packaging wrappers provided with tear strips from a continuous supply and at high process speeds (column 1, lines 47-51).

Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forman (3,456,780) in view of Kalajian (3,687,352).

Forman does not disclose an easy open/close element nor the detaching strip is self sticking and reclosable nor the surface that can be grasped by the consumer of the easy open/close element contains no adhesive. However, Kalajian disclose similar process for the manufacture of an easy open device for “flow Pack” packages comprising the steps of having an easy open/close (Figs. 7 and 9, via 35) element and the detaching strip is self sticking and reclosable (Figs. 7 and 9, via 33) and the surface that can be grasped by the consumer of the easy open/close element contains no adhesive, see for example (Figs. 7 and 9).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Forman’s process for the manufacture of an easy open

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device for "flow Pack" packages by having the steps of having an easy open/close element and the detaching strip is self sticking and reclosable and the surface that can be grasped by the consumer of the easy open/close element contains no adhesive, as suggested by Kalajian, in order to provide a closure mechanism for a single service container, which is cheap and easy to manufacture and which is entirely reliable and satisfactory in its operation (column 1, lines 29-32).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ausnit 4848928, Yano 3906702, Mikio 3528601, Marx 3520469, Underwood 3187982, Dickinson 3088379, and Ferguson 2780379 disclose different process for the manufacture of an easy open device for "flow Pack" packages.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is (703) 308-2809. The examiner can normally be reached on Tuesday - Friday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

ST.



Mickey Yu
Supervisory Patent Examiner
Group 3700